IN THE HIGH COURT OF JUDICATURE AT BOMBAY NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 2139/2007

Raghuvirsingh s/o Bhagwansingh
Chauhan, r/o Upasni House,
Opposite T. V. Centre, Arni Road,
Yavatmal.

.....PETITIONER

...V E R S U S...

Kishor Madhukarrao Upasni,
Aged about 47 years,
r/o Plot No. 86, 87, Poonam Vihar,
Sanraj Pushkar Apartment,
Swawlambi Nagar, Nagpur.

.....**RESPONDENT**

Mrs. Manisha Kathale, Advocate holding for Mr. Suresh Dhole, Advocate for the petitioner.
Mr. A. V. Khare, Advocate holding for Mr. Amit Kukday, for the respondent.

CORAM:- A. B. CHAUDHARI, J.
DATE:- **29th June, 2007**

ORAL ORDER

1. Heard Mrs. Kathale, Adv. holding for Mr. Dhole, Adv. for the petitioner and Mr. Khare, Adv. holding for Mr. Kukday, Adv. for the respondent.

2. The present petition is filed by the petitioner/tenant against the order dated 28.03.2007 and 13.04.2007 in Regular Civil Suit No. 54/2002 made by 5th Jt. Civil Judge Junior Division, Yavatmal, rejecting the petitioner's request for examining number of witnesses.

3. On 21.06.2007, this writ petition was heard at length and Mr. Kukday, the learned counsel for the respondent, invited my attention to an affidavit filed by the respondent asserting that the petitioner had obtained several adjournments before the trial Court as specified by him in para 8 and 9 of that affidavit dated 13.06.2007. After going through the said affidavit, this Court, in order to give opportunity to the counsel for the petitioner Mr. Dhole, asked him to respond to the contents of the said affidavit. Mr. Dhole, Advocate asserted that the petitioner/tenant never asked for any adjournments on the dates mentioned in para 8 and 9 of that affidavit. The only way to find out the truth was to call for the records from the trial Court since the counsel for the petitioner confidently refutted the statement made by Mr. Kukday, Advocate on this aspect of adjournment. Accordingly, I made order on 14.06.2007 calling record and proceeding. Since Mr. Dhole, Advocate pressed for

staying the progress of the suit, which was, according to him, likely to be decided, I issued *interim* order staying the proceeding of the suit. After receipt of the record on 27.06.2007, the matter was adjourned to 28.06.2007 and on 28.06.2007, since it was mentioned that Mr. Dhole, Advocate was unwell, the matter was adjourned with specific instructions that since the records were called from the trial Court, it was not proper to go on adjourning the petition because the suit was at the final stage. Hence, the petition was adjourned for today.

Today, Mr.Dhole, Advocate is not present and he is reported to be unwell. Mrs. Manisha Kathale, Advocate appears for the petitioner. She submitted that the impugned orders are illegal inasmuch as the petitioner is being denied the opportunity to examine the witnesses in support of the defence of the petitioner. Mr. Khare, Advocate holding for Mr. Kukday, Advocate supported the impugned order.

4. I have gone through the records and proceedings of the trial Court. Undoubtedly, the tenant ought to be given sufficient opportunity in the trial Court. In the instant case, however, the appellate Court had

made an order on 07.10.2005 directing the trial Court to decide the suit within six months, which expired on 31.05.2006. The record reveals that it is the petitioner, who was successful in prolonging the trial without having any regard to the directions issued by the appellate Court. The record indicates the following dates on which adjournments were sought by the petitioner/tenant:-

Sr. No.	Dates	Particulars
1.	04.08.2006	Exh. 84, adjournment application by the petitioner allowed with cost of Rs. 50/-.
2.	08.08.2006	Cost not paid.
3.	10.08.2006	Exh.83 for amendment application by the petitioner, rejected with exemplary cost of Rs. 500/-.
4.	16.08.2006	Exh.-89 adjournment application by the petitioner
5.	04.09.2006	Exh.-90 adjournment application by the petitioner, granted as last chance.
6.	11.09.2006	Exh.-92 adjournment application by the petitioner allowed with cost of Rs. 200/-.
7.	15.09.2006	Exh.-93 adjournment application by the petitioner allowed till 25.09.2006.

8. 25.09.2006 Exh.-94 adjournment application by the petitioner allowed.
9. 03.10.2006 Exh.-95 adjournment application by petitioner allowed with cost of Rs. 200/-.
10. 16.10.2006 Exh.-97 adjournment application by the petitioner granted.
11. 10.11.2006 Exh.-98 application for directing the defendant to supply registered address made by the petitioner.
12. 15.11.2006 Exh.-102 adjournment application by the petitioner granted subject to cost of Rs. 200/-.
13. 02.12.2006 Exh.-104 Amendment application filed by the petitioner allowed.
14. 11.12.2006 Exh.-105 Adjournment application by the petitioner, rejected.
15. 12.01.2007 Exh.-106 Application for permission to file documents filed by the petitioner.
16. 15.01.2007 Exh.-107 Adjournment application by the petitioner granted.
17. 17.01.2007 Exh.110 Adjournment application by the petitioner, rejected.
18. 18.01.2007 Exh.-113 application for permission for cross-examination made by the petitioner, granted.
19. 06.02.2007 Exh.-142, adjournment application by the petitioner, rejected.

20. 20.02.2007 Exh.-146 application under Order 14 Rule 5, made by the petitioner rejected.
21. 23.02.007 Exh.-150 application for filing documents, made by the petitioner, rejected.
22. 03.3.2007 Exh.-151 adjournment application by the petitioner granted as last chance.
23. 05.03.2007 Exh.-152, the petitioner's application for adjournment granted.
24. 09.04.2007 Application to set aside order dated 28.02.2007, rejected.
25. 13.04.2007 Exh.-159 adjournment application by the petitioner rejected.
26. 21.04.2007 Exh.-160 application for stay of the suit, rejected.
27. 06.06.2007 Exh.-161 adjournment application by the petitioner, rejected with costs of Rs. 100/-.

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5. On 20.03.2007, the trial Court had directed the petitioner to file affidavits of all his witnesses at once, but, the petitioner flouted the said direction.

Now, looking to the above conduct of the petitioner in protracting the suit, I find that the trial Court was right in passing the impugned orders as the petitioner/tenant has misused the Court proceedings. It is seen that the respondent/landlord has to undertake

journey from Nagpur to Yavatmal, almost on all the dates. In my opinion, looking to the above facts, the petitioner has sufficiently harassed the respondent/landlord. The impugned orders are, therefore, maintained.

6. The overzealous statement made by Mr. Dhole, Advocate before this Court, without verifying from the records, that his client never applied for adjournment is, thus, falsified. In that view of the matter, Mr. Dhole, Advocate is warned not to make such statements in the High Court, without verifying the records.

7. Now, looking to the conduct of the petitioner as aforesaid, it is a fit case, where exemplary cost is required to be saddled on the petitioner. The petitioner is, therefore, directed to pay exemplary cost of Rs. 10,000/- (Rs. Ten Thousand Only) to the respondent, within a period of two weeks.

8. The writ petition is dismissed. The trial Court to proceed further with the suit and decide the same within three weeks from the

date of receipt of this order. Record and proceedings be sent to the trial Court immediately.

JUDGE

kahale